

IN THE HIGH COURT OF JUDICATURE AT PATNA
MA No.104 of 2006
KUMARI SHIKHA
Versus
LALKRISHNA DUTTA THAKUR

For the appellant : Mr. Uma Kant Prasad, Advocate
For the respondent : None

PRESENT

Hon'ble the Chief Justice
And
Hon'ble Mr. Justice Kishore K. Mandal

Dated, the 28th July, 2008

We heard the counsel for the appellant.

2. Section 11 of the Hindu Marriage Act, 1955 reads thus:

“Valid marriages.- Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto [against the other party], be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of Section 5.”

3. For getting declaration under Section 11 with regard to void marriage, there has to be solemnization of marriage after commencement of the Act, 1955.

4. We wanted to know from the counsel for the appellant the date of solemnization of marriage between the appellant and the respondent. He read the entire application made by the appellant under Section 11 of the Act, 1955 but he could not show any averment thereunder with regard to solemnization of marriage. Even if, we

assume that the Principal Judge, Family Court, Bhagalpur was not justified in observing that a suit should have been filed under Section 24 of the Special Marriage Act, the ultimate order of dismissal of the application under Section 11 of the Hindu Marriage Act, 1955 cannot be faulted.

5. Section 7 of the Family Courts Act, 1984 provides for jurisdiction of the Family Court with regard to subject provided thereunder. It reads thus:

“Jurisdiction- (1) Subject to the other provisions of this Act, a Family Court shall –

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district Court or, as the case may be, such subordinate civil Court for the area to which the jurisdiction of the Family Court extends.

Explanation:- The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:-

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

- (g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor
- (2) Subject to the other provisions of this Act, a Family Court shall also have and exercise –
 - (a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and
 - (b) such other jurisdiction as may be conferred on its by any other enactment.”

6. Section 8 of the Family Courts Act, 1984 reads thus:-

“Exclusion of jurisdiction and pending proceedings.-

Where a Family Court has been established for any area, -

- (a) no district Court or any subordinate civil Court referred to in sub-section (1) of section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the Explanation to that sub-section;
 - (b) no Magistrate shall, in relation to such area, have or exercise any jurisdiction or powers under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);
 - (c) every suit or proceeding of the nature referred to in the Explanation to sub-section (1) of section 7 and every proceeding under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974),-
 - (i) which is pending immediately before the establishment of such Family Court before any district Court or subordinate Court referred to in that sub-section or, as the case may be, before any Magistrate under the said Code; and
 - (ii) which would have been required to be instituted or taken before or by such Family Court if, before the date on which such suit or proceeding was instituted or taken, this Act had come into force and such Family Court had been established,
- shall stand transferred to such Family Court on the date on which it is established.”

7. A conjoint reading of Sections 7 & 8 would thus show that not only for the subjects referred to in Section 7, the jurisdiction

has been conferred on the Family Court, but also by virtue of Section 8, jurisdiction of other courts has been excluded.

8. Seen thus, if no marriage between the appellant and the respondent was solemnized and in the opinion of the appellant the marriage certificate obtained by the respondent was fraudulent document, the remedy for her was to seek declaration that such marriage certificate was void.

9. Consequently, we find no justification to interfere with the order dated 3rd March, 2006 passed by the Principal Judge, Family Court, Bhagalpur.

10. Miscellaneous appeal does not deserve to be admitted. It is dismissed in limine.

11. However, this shall not preclude the appellant in seeking declaration of the marriage certificate obtained by the respondent showing the marriage of the respondent to the appellant to be void and fraudulent from the competent Court in accordance with law.

R. M. Lodha, CJ.

Kishore K. Mandal, J.

Neyaz/-